



INVESTIGATIVE REPORT

David Cook, Inspector General

OFFICE: OFFICE OF THE INDIANA ATTORNEY GENERAL
TITLE: CONTINGENCY FEE CONTRACT
CASE ID: 2023-05-0195
DATE: June 1, 2023

After examination and review, the Office of the Inspector General (OIG) Chief Legal Counsel, Tiffany Mulligan, reports as follows:

The purpose of this report is to fulfill the statutory requirements of Ind. Code §4-6-3-2.5 regarding contingency fee contracts. This statute requires the Inspector General (IG) to review proposed contingency fee contracts for possible conflicts of interests and potential Code of Ethics violations. Under this statute, an agency may not enter into a contingency fee contract unless the IG has made a written determination that entering into the contract would not violate the Indiana Code of Ethics, set out in Ind. Code 4-2-6 and 42 IAC 1-5, or any statute or agency rule concerning conflict of interests.

On May 31, 2023, the Office of the Indiana Attorney General (OAG) notified the OIG that it wished to enter into a contingency fee contract with Revenue Assistance Corporation (d/b/a/ Revenue Group). The OAG explains that Revenue Group will assist the State of Indiana in collection of claims against various individual and business accounts for recovery of overpayments and assessments of accounts owed to state offices and agencies, as well as state universities and court systems.

According to the OAG's proposed contract with Revenue Group, the parties agreed to contingency fees for an aggregate amount collected up to, and not exceeding, two million dollars (\$2,000,000), as follows: (1) twenty-five percent (25%) for all aggregate amounts collected from pre-legal collection services, which do not require legal services; and (2) thirty-three percent (33%) for all aggregate amounts collected through litigation by way of collection services and/or legal services in legal proceedings or formal litigation in a court of law. For any aggregate amount collected in the amount of two million dollars (\$2,000,000) or more, the contract provides that the State will pay the following contingency fees: (1) twenty-five percent (25%) of any recovery exceeding two million dollars (\$2,000,000) and that is not more than ten million dollars (\$10,000,000); (2) twenty percent (20%) of any recovery exceeding ten million dollars (\$10,000,000) but not more than fifteen million dollars (\$15,000,000); (3) fifteen percent (15%) of any recovery exceeding fifteen million dollars (\$15,000,000) and not more than twenty million dollars (\$20,000,000); or (4) ten percent (10%) of any recovery exceeding twenty million dollars (\$20,000,000) and not more than twenty-five million dollars (\$25,000,000); or (5) five percent (5%) of any recovery exceeding twenty-five million dollars (\$25,000,000).

Pursuant to Ind. Code §4-6-3-2.5(b), an agency is required to make a written determination before entering into a contingency fee contract that the contingency fee representation is cost effective and in the public interest. The OAG must consider five factors when making this determination as outlined by Ind. Code §4-6-3-2.5(c). Those factors are as follows:

- (1) Whether the agency has sufficient and appropriate legal and financial resources to handle the legal matter in question.
- (2) The time and labor required to conduct the litigation.
- (3) The novelty, complexity and difficulty of the questions involved in the litigation.

- (4) The expertise and experience required to perform the attorney services properly.
- (5) The geographic area where the attorney services are to be provided.

The OAG made such a determination and considered all the factors outlined in the statute.

In the OAG's written determination, the OAG explains that the claims Revenue Group will handle stem from the work of the OAG's Asset Recovery and Bankruptcy Litigation section (ARB). The ARB currently is staffed with twelve attorneys and has approximately 1,500 litigation matters on behalf of the State; therefore, the OAG finds that additional resources and expertise are needed to ensure Indiana's interests in the collection claims are processed properly. The OAG also finds that the State's needs are best served by the efficient and specialized services of a third-party collections firm. The OAG explains that collections work is heavily regulated at the federal and state level and requires a detailed understanding of the process available for recovering funds from judgments. The OAG writes that Revenue Group has an extensive history working within these regulations and has built established practices assisting governmental entities at the state level in debt collection practices. Finally, the OAG writes that Revenue Group has the resources to manage claims pending in multiple venues around the State and nationwide.

The OAG has determined that Revenue Group does not employ any state employees, including the OAG personnel involved in contracting decisions. Furthermore, no OAG employee or immediate family member has any financial interest in Revenue Group. Likewise, no OAG employee or OAG immediate family member has any financial interest in the contract itself. Finally, the OAG provides that no OAG employee is contracting with or will be supervising the work of a business entity in which a relative is a partner, executive officer or a sole proprietor. To the best of the OAG's knowledge, neither Revenue Group nor any member of Revenue Group has a conflict of interests that would violate either the Code of Ethics or any ethics rules of the Indiana

Supreme Court. The OAG also writes that if the OAG determines that a matter referred to Revenue Group requires the use of legal counsel, the OAG will ensure that whichever counsel is chosen also meets this ethical criteria.

Based on the information provided and after careful review and examination, the OIG finds that entering into this contingency fee contract with Revenue Group will not violate the Indiana Code of Ethics or any statute or agency rules concerning conflict of interests. This report is issued in compliance with the above noted statutory requirements.

Dated: June 1, 2023

APPROVED BY:

A handwritten signature in cursive script that reads "David Cook". The signature is written in black ink and is positioned above a horizontal line.

David Cook, Inspector General